PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos. 15-O-11271-CV;
	)	16-O-13399-CV
	)	(Consolidated.)
LOTTIE WOLFE COHEN,	)	
	)	DECISION
	)	
A Member of the State Bar, No. 94674.	)	
	)	

Introduction[1]

In this consolidated, original disciplinary matter, respondent LOTTIE WOLFE COHEN (Respondent) is charged with the following eight counts of misconduct in two separate client matters: two counts of engaging in acts of moral turpitude by issuing a not sufficiently funded (NSF) check; two counts of engaging in acts of moral turpitude by misappropriating client funds; two counts of failing to maintain client funds in a trust account; and two counts of failing to maintain proper trust account records.

The court finds Respondent culpable on six of the eight counts. Specifically, the court finds Respondent culpable on two counts of engaging in acts of moral turpitude by

[1] Unless otherwise indicated, all statutory references are to the Business and Professions Code, and all references to rules are to the State Bar Rules of Professional Conduct. All references to standards (or stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

misappropriating client funds through gross negligence, two counts of failing to maintain client funds in trust account, and on two counts of failing to maintain proper client trust account records. The court does not find Respondent culpable on the two remaining counts and dismisses those counts with prejudice.

The court concludes that the appropriate level of discipline for the found misconduct is one year of stayed suspension and two years of probation with conditions, including six-months' actual suspension and that Respondent's handling of and accounting for client funds be supervised by a California Certified Public Accountant or an accounting professional approved by the State Bar's Office of Probation and that Respondent again attend the State Bar's Client Trust Accounting School.

SIGNIFICANT PROCEDURAL HISTORY

The State Bar's Office of Chief Trial Counsel (OCTC) filed the notice of disciplinary charges (NDC) against Respondent in case number 16-O-13399 on June 6, 2017. OCTC filed the NDC against Respondent in case number 15-O-11271 on January 31, 2018.

On January 31, 2018, OCTC also filed a motion for leave to file a first amended NDC in case number 16-O-13399. The court granted OCTC's motion, and the first amended NDC was filed in case number 16-O-13399 on March 8, 2018.

Thereafter, on April 5, 2018, on the motion of OCTC, the court consolidated case number 16-O-13399 with case number 15-O-11271 for all purposes. On April 13, 2018, Respondent filed a response to the NDC in case number 15-O-11271, and on June 9, 2018, Respondent filed a response to the first amended NDC in case number 16-O-13399.

Respondent unsuccessfully sought interlocutory review of two of this court's pretrial rulings. On April 25, 2018, the review department denied Respondent's petition for interlocutory review of this court's denial of her motion to dismiss the NDC in case number

15-O-11271. And, on May 4, 2018, the review department denied Respondent's petition for interlocutory review of this court's denial of her motion to exclude a State Bar investigator's letter dated August 29, 2017.

Trial was held on July 3, 5, 6, and 10, 2018. The court took the consolidated proceeding under submission for decision on July 10, 2018. And closing briefs were filed on July 27, 2018.

POSTTRIAL RULINGS

At trial, when OCTC rested, Respondent made a motion to dismiss under Rule of Procedure of the State Bar, rule 5.110. The court tentatively denied Respondent's motion, and the trial continued. In light of the fact that the court finds Respondent culpable on six of the eight counts of charged misconduct, the court adopts its tentative denial of Respondent's rule 5.110 motion to dismiss as its final ruling on the motion.

On July 27, 2018, Respondent filed a motion for admonition. In light of the fact that the court finds Respondent culpable on two counts of failing to maintain proper client trust account records and two counts of failing to maintain funds in a client trust account and misappropriating client funds through gross negligence after Respondent recently attended and successfully completed the State Bar Client Trust Accounting School as a condition of a warning letter she received from OCTC in September 2015, the court denies Respondent's motion for admonition.

On July 31, 2018, OCTC filed a motion to strike, from Respondent's closing brief, Respondent's references and citations to unpublished State Bar Court cases. Respondent failed to file an opposition to OCTC's motion to strike, and the time in which she was to have filed one has expired. The court grants OCTC's unopposed July 31, 2018, motion to strike and orders that all citations and references to unpublished State Bar Court decisions or opinions in Respondent's closing brief are deemed stricken. (Rules Proc. of State Bar, rule 5.159(B) [only published

review department opinions are binding on the hearing department and citable as precedent in the State Bar Court].)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent was admitted to the practice of law in the State of California on December 16, 1980, and has been licensed to practice law in this state since that time.

Case Number 15-O-11271 – Calderon Matter

Findings of Fact

In December 2012, Ms. M. Calderon (Calderon) employed Respondent to represent her in an employment discrimination matter.[2] On March 7, 2013, the matter was settled in favor of Calderon in the amount of $98,000. Calderon was entitled to approximately $63,025, and Respondent's attorney fees were $34,975 of the $98,000.

On October 29, 2014, Respondent received the $98,000 settlement check, which she deposited into her client trust account (CTA) at JP Morgan Chase Bank (Chase Bank) bearing account number XXXXX0217 (CTA 0217) on October 30, 2014. Calderon did not want to receive her $63,025 share of the settlement proceeds all at one time. Calderon asked Respondent to distribute her $63,025 share to her in three separate checks, which she could cash one at a time. Thereafter, with respect to the $98,000 in settlement proceeds, Respondent issued five checks drawn on CTA 0217. Those five checks are listed below in the order in which they were paid or retuned unpaid by Chase Bank.

- Check number 2189 in the amount of $20,000 was made payable to Calderon; dated November 13, 2014; and paid on November 14, 2014.

[2] The retainer agreement admitted into evidence is dated only as "December __ 2012." Moreover, the retainer agreement admitted into evidence is signed only by Respondent. The fully executed retainer agreement was in the client file when the file was returned to Calderon not long after September 17, 2015, when Respondent received the warning letter from OCTC.

- Check number 2192 in the amount of $30,000 was made payable to Respondent; dated November 24, 2014; and paid on December 5, 2014.[3]
- Check number 2185 in the amount of $5,000 was made payable to Chase Bank; dated November 11, 2014; and paid on December 5, 2014. Out of the $5,000, $4,975 completed the distribution of Respondent's $34,975 ($30,000 plus $4,975) attorney's fees in the Calderon matter.
- Check number 2187 in the amount of $20,000 was made payable Calderon; dated November 13, 2014; and paid on December 12, 2014.
- Check number 2190 in the amount of $23,025 was made payable to Calderon and postdated to January 2, 2015; but when it was presented to Chase Bank for payment on January 5, 2015, Chase Bank returned it unpaid because it was an NSF check ($23,025 NSF check)..

As of December 12, 2014, after Chase Bank paid check number 2187, of the $98,000 in settlement proceeds deposited into CTA 0217, a total of $74,975 ($20,000 plus $30,000 plus $4,975 plus $20,000) had been properly disbursed and the remaining $23,025 ($98,000 less $79,975) should have still been on deposit. However, on December 12, 2014, after check 2187 had been paid, the actual balance in CTA 0217 was only $21,215.97. Thus, as of December 12, 2014, the balance in CTA 0217 dipped below the $23,025 that should have been on deposit for Calderon's benefit by $1,809.03 ($23,025 less $21,215.97). By January 5, 2015, when the $23,025 NSF check was presented to Chase Bank for payment, the actual balance in CTA 0217 was only $100. Thus, as of January 5, 2015, the balance in CTA 0217 dipped below the $23,025 that should have been on deposit for Calderon's benefit by $22,925 ($23,025 less $100).

After Calderon notified Respondent that check 2190 had been returned for insufficient funds, Respondent issued the following four replacement checks made payable to Calderon and drawn on Respondent's general operating account:

---

[3] Even though the memo line on check number 2192 reads "trust transfer," check number 2192 was a partial distribution to Respondent of her attorney fees in the Calderon matter.

- Check number 1707 in the amount of $7,000 was paid on April 3, 2015.
- Check number 1524 in the amount of $3,050 was paid on April 20, 2015.
- Check number 1709 in the amount of $6,000 was paid on May 4, 2015.
- Check number 1708 in the amount of $7,000 was paid on June 3, 2015.

After check number 1708 was paid on June 3, 2015, Calderon had received all of her $63,025 share of the $98,000 settlement proceeds.

The foregoing four replacement checks do not total $23,025, but instead total $23,050 ($7,000 plus $3,050 plus $6,000 plus $7,000). That is because the second replacement check for $3,050 included an additional $25 to reimburse Calderon for the bank fees she incurred when the $23,025 NSF check was returned unpaid.

On January 7, 2015, in compliance with section 6091.1, Chase Bank reported the $23,025 NSF check to the State Bar.

On March 13, 2015, the OCTC sent a letter to Respondent requesting a written explanation of the $23,025 NSF check. On March 16, 2015, Respondent sent the State Bar a written response "explaining" the $23,025 NSF check as follows. After Respondent settled Calderon's case and deposited the $98,000 settlement check into CTA 0217, Calderon asked Respondent to write her a "series of checks" rather than a single check for the lump sum. Calderon requested that the checks "be written so that she could cash them over time." Respondent did not know when Calderon would cash the checks. In mid-December 2014 Respondent sought to reduce the balance in CTA 0217 and transferred all but $100 of the funds in CTA 0217 to her general law office operating account, which was account number XXXXX5293 at Chase Bank, "thinking the remaining were my proceeds [i.e., attorney fees] from the case."

Respondent further explained that, when the $23,025 NSF check was not paid, Calderon contacted Respondent and "asked for payment to be paid another way because of [Calderon's] then-different circumstances, which I promptly paid her the $23,025.00." "The client did receive the last payment of $23,025 in the manner she requested in January 2015. Ms. Calderon has no

complaints particularly since she changed her mind about how she wanted the last payment anyways."

Respondent's March 16, 2015, written response to the State Bar's letter was not completely accurate because, on March 16, 2015, none of the four replacement checks had been paid by Chase Bank. As noted above, the first replacement check was paid on April 3, 2015, and the last replacement check was paid on June 3, 2015.

On June 10, 2015, Respondent was interviewed by OCTC investigator Michael Chavez. Respondent's statements to investigator Chavez were consistent with her March 16, 2015, written response to OCTC's inquiry letter. In his June 10, 2015, memo memorializing his interview with Respondent, investigator Chavez states that "Calderon requested that the distribution of her settlement proceeds be distributed over the course of three months (November 2014 through January 2015)." Respondent stated that Calderon claimed that a staggered payment plan was preferable because Calderon was out of the United States for long periods of time. Respondent told Chavez that she suspected that there were other improper reasons that Calderon wanted installment payments and not a lump sum distribution of her $63,025 share of the settlement proceeds.[4]

Respondent further stated that she wrote three checks on November 13, 2014. She dated the first two checks November 13, 2014, but postdated the third check for January 2, 2015. Respondent stated that "she simply forgot that the balance remaining in her CTA [0217] in December 2014 belonged to Calderon, and thinking that they belonged to her she transferred the funds out of [CTA 0217] and into her [general operating] account." Respondent acknowledged to investigator Chavez that it was her mistake that caused the [$23,025] check to bounce.

OCTC initially closed its investigation of the $23,025 NSF check by issuing a conditional warning letter to Respondent on September 17, 2015. The terms of the warning letter required

[4] Regardless of her motive or intent, Respondent's comments to Chavez in which Respondent speculated as to Calderon's motives for requesting that her $63,025 share of the settlement proceeds be disbursed to her in installments were inappropriate, if not improper, comments for an attorney to make about a client.

that Respondent attend and successfully complete the State Bar's Client Trust Accounting School within six months. In the warning letter, OCTC stated: "You explained that the insufficient funds transaction occurred when your client waited three months to negotiate one of three settlement checks you issued on or about November 13, 2014. You further explained that you were unaware that the funds remaining in your client trust account at the end of the year belonged to the client and that you mistakenly withdrew the funds believing them to be yours." Respondent received the September 17, 2015, warning letter and did not dispute the foregoing statements that OCTC attributed to her in it.

In his September 16, 2015, memo closing OCTC's investigation of the $23,025 NSF check, investigator Chavez again recites Respondent's foregoing and consistent explanations. What is more, Chavez states in that memo that he confirmed Respondent's explanations and version of the events with Calderon.

Finally, in an October 9, 2017, letter that Respondent sent to OCTC Investigator Gervin, Respondent repeated her statement that the third check she gave to Calderon (i.e., the $23,025 NSF check) was "post dated for January 2, 2015."

After Respondent received the September 17, 2015, warning letter, Respondent promptly attended and successfully completed the State Bar Client Trust Accounting School on October 23, 2015. About six months later, however, Chase Bank notified the State Bar that an NSF check in the amount of $3,494.05 drawn on Respondent's CTA bearing account number XXXXX2063 (CTA 2063) had been presented for payment and returned unpaid ($3,494.05 NSF check). The $3,494.05 NSF check is the subject of case number 16-O-13399 in this consolidated proceeding. After OCTC learned of the $3,494.05 NSF check, OCTC reopened its investigation of the $23,025 NSF check and notified Respondent of the reopening in a letter dated August 24, 2017.

Notwithstanding Respondent's multiple consistent pretrial explanations regarding the $23,025 NSF, which the court summarized above, Respondent effectively repudiated her pretrial explanations at trial both by advancing contrary facts and by testifying to conflicting facts.

Respondent advanced that she wrote the $23,025 NSF check (i.e., the third check Respondent gave to Calderon) on January 2, 2015; that, on January 2, 2015, there were sufficient funds on deposit in CTA 0217 from which Chase Bank could pay the check; and that, when she transferred all but $100 of the funds on deposit in CTA 0217 into her general operating account on January 5, 2015, she mistakenly thought the $23,025 NSF check had already been paid.

Respondent, herself, contradicted the facts she advanced about having written check number 2190 on January 2, 2015, by testifying (1) that Calderon contacted her in December 2014 and asked her to spread out the $23,025 over four new checks in amounts that Calderon would indicate to Respondent when Calderon returned to Los Angeles from the trip she was then on; (2) that in complying with Calderon's new request to spread the $23,025 out into four new checks she transferred, on January 5, 2015, the funds in CTA 0217 into her general operating account to hold pending Calderon's instructions upon her return to Los Angeles; and (3) that Calderon's son in Los Angeles caused check number 2190 to be returned unpaid as an NSF check because he improperly attempted to cash check number 2190 on January 5, 2015. Respondent's trial testimony seemed to suggest that Calderon instructed or consented to Respondent's moving the money in CTA 0217 into Respondent's general operating account. The court finds that Respondent's testimony as summarized in this paragraph lacks candor. As noted below, such lack of candor is an extremely aggravating circumstance.[5]

[5] Of course, if the court had found Respondent's trial testimony credible, it would have also found that Respondent's contrary explanations lacked candor and that Respondent's transfer of more than $20,000 from CTA 0217 to Respondent's general operating account was a serious,

In sum, the court finds that, when Respondent transferred all but $100 of the funds on deposit in CTA 0217 into her general operating account, Respondent forgot she had already withdrawn all of her $34,975 in attorney fees from CTA 0217, forgot that she had given Calderon a $23,025 check postdated for January 2, 2015, and mistakenly believed she was entitled to the remaining balance on deposit in CTA 0217 as part of her $34,975 attorney fees share of the $98,000 settlement proceeds from the Calderon matter.

At trial, Respondent introduced a one-page document entitled "Accounting for Client ... Calderon" with four columns titled "check number," "amount," "payee/details," and "date checks cleared," respectively, with copies of all of the checks relating to the Calderon matter attached to it. (Ex. 1039.) While the document and its attachments is an appropriate accounting to Calderon of the $98,000 settlement proceeds, the document does not meet the requirements of a client ledger under the Trust Account Record Keeping Standards that were adopted by the State Bar's governing body on July 11, 1992, and that became effective on January 1, 1993 (State Bar Trust Account Record Keeping Standards), and there is no evidence that the records were kept contemporaneously.

///

///

///

---

deliberate violation of rule 4-100(A). Such a deliberate violation, standing alone, would warrant a significant period of actual suspension as it would strongly suggest that, despite practicing law for almost 40 years, Respondent fails to grasp or appreciate that rule 4-100(A) mirrors the fundamental duty that a fiduciary owes to a beneficiary to keep the beneficiary's money in a trust account and separate from the fiduciary's money. OCTC aptly notes in its posttrial brief that a client cannot authorize, much less instruct, an attorney to violate rule 4-100(A) or any other rule of professional conduct. Even though a client may influence whether the attorney deposits and holds the client's funds in an IOLTA CTA or in a non-IOLTA CTA, the client cannot consent, authorize, or instruct the attorney to deposit or hold the client's fund in a non-trust account in direct violation of rule 4-100(A).

Conclusions of Law

Count One – Section 6106 (Moral Turpitude – Issuance of NSF Checks)

Section 6106 provides that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In count one, OCTC charges that, on about January 2, 2015, respondent issued check number 2190 in the amount of $23,025 drawn on CTA 0217 when respondent knew that there were insufficient funds in the client trust account to pay them and thereby committed an act involving moral turpitude, dishonesty, or corruption in willful violation section 6106. The record fails to establish, by clear and convincing evidence, the violation of section 6106 charged in count one.

As OCTC aptly notes in its posttrial brief, an attorney's practice of issuing checks that the attorney knows will not be honored involves dishonesty in willful violation of section 6106's proscription of acts involving moral turpitude, dishonesty, or corruption. (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54.) OCTC, however, failed to proffer any evidence suggesting that Respondent engaged in the *practice of issuing checks she knows will not be honored.* In fact, OCTC failed to proffer any evidence suggesting that Respondent issued a single check that she knew would not be honored when presented for payment.

OCTC failed to prove that Respondent issued CTA 0217 check number 2190 on or about January 2, 2015. In fact, the record clearly establishes that Respondent issued check number 2190 on November 13, 2014, and postdated it for January 2, 2015. Moreover, the record clearly establishes that, when Respondent issued check number 2190 on November 13, 2014, there was significantly more than $23,025 on deposit in CTA 0217.

Count one is DISMISSED with prejudice for want of proof.

///

///

Count Two – Section 6106 (Moral Turpitude - Misappropriation)
Count Three – Rule 4-100(A) (Failure to Keep Client Funds in Trust Account)

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith except for limited exceptions not applicable here. "An attorney violates [rule 4-100(A)] when he or she fails to deposit and manage funds in the manner delineated by the rule, even if this failure does not harm the client. [Citation.]" (*Murray v. State Bar* (1985) 40 Cal.3d 575, 584.) Moreover, a violation of rule 4-100(A) can also involve the willful misappropriation of client funds.

The terms "misappropriation" and "willful misappropriation," which are often used interchangeably, do not appear in either the Rules of Professional Conduct of the State Bar or the State Bar Act. Generally, the terms are used to encompass an attorney's unauthorized use or withholding of client's funds. (*Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 903; *Cutler v. State Bar* (1969) 71 Cal.2d 241, 251.) Without question, those terms cover a wide range of conduct varying significantly in the degree of culpability. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38; see also *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367 [not every misappropriation that is technically willful is equally culpable]; see also *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 26.) In fact, not all willful misappropriations involve moral turpitude or dishonesty. (*In the Matter of Hagan* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 167-168, citing *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 324-328 and *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092, 1095, 1096-1098.)

A presumption of misappropriation of client funds arises whenever the actual balance of the bank account in which the client's funds were deposited drops below the amount credited to that client. (*Edwards v. State Bar, supra*, 52 Cal.3d at p. 37; *Palomo v. State Bar* (1984) 36 Cal.3d 785, 795; *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 123.) Once such a presumption of

misappropriation arises, the burden then shifts to the attorney to show (1) that no misappropriation occurred or (2) that the misappropriation occurred as a result of negligence and not gross negligence or intentional dishonesty. Otherwise, the attorney will be found culpable of engaging in an act of moral turpitude or dishonesty in willful violation of section 6106.

To establish that a misappropriation resulted from negligence and not gross negligence, the attorney must ordinarily prove that he or she has put in place and follows appropriate procedures for handling and accounting for client funds and that the misappropriation nonetheless occurred. At a minimum, the attorney must establish that he or she keeps the contemporaneous records of the receipt and disbursement of client funds required under the State Bar Trust Account Record Keeping Standards.

As noted above, the record clearly establishes that beginning on December 12, 2014, the actual balance in CTA 0217, dropped below the $23,025 credited to Calderon by $1,809.03 and that by January 5, 2015, the actual balance in CTA 0217 dropped below the $23,025 credited to Calderon by $22,925.

Thus, a presumption arises that Respondent misappropriated $1,809.03 of Calderon's funds on December 12, 2014. In addition, another presumption arises that Respondent misappropriated an additional $21,115.97 ($22,925 less $1,809.03) of Calderon's funds on January 5, 2015. Accordingly, the burden shifted to Respondent to show that no misappropriation occurred or that the misappropriations occurred as a result of negligence and not gross negligence or intentional dishonesty. If Respondent fails to meet her burden, the court is to find her culpable of engaging in acts of moral turpitude or dishonesty in willful violation of section 6106.

Respondent did not and could not establish that no misappropriation occurred because the record clearly establishes that Calderon was deprived of the use and benefit of her $23,025

beginning on January 5, 2015, when Chase Bank returned check number 2190 unpaid because it was an NSF check. Respondent did, however, clearly establish that she did not intentionally or dishonestly misappropriate any of Calderon's funds.[6]

Respondent did, however, fail to clearly establish that she kept the contemporaneous accounting records of her receipt and disbursement of client funds as required by the State Bar Trust Account Record Keeping Standards. Accordingly, the record clearly establishes that Respondent misappropriated a total of $22,925 ($21,115.97 plus $1,809.03) of Calderon's funds through gross negligence in not keeping the required contemporaneous accounting records. The fact that Respondent never intended to even temporarily deprive Calderon of any of her funds is not a defense to misappropriation resulting from gross negligence.

Respondent's misappropriations were not the result of a single mistaken belief that she was entitled to the balance of the funds on deposit in CTA 0217 as her attorney fees because Respondent's misappropriations of Calderon's funds occurred over a 25-day period from December 12, 2014, thorough January 5, 2015.

In sum, the court finds that the record clearly establishes that Respondent willfully misappropriated a total of $22,925 of Calderon's funds on December 12, 2014, and January 5, 2015, as a result of Respondent's gross negligence in accounting for her disbursements of client funds and thereby engaged in acts involving moral turpitude in willful violation of section 6106.

The record also clearly establishes that Respondent willfully violated rule 4-100(A) by failing to maintain Calderon's share of the $98,000 in settlement proceeds in CTA 0217 on December 12, 2014, and January 5, 2015, when she misappropriated a total of $22,925 from Calderon. However, the court gives no additional weight to this violation in determining the

[6] An attorney's intentional or dishonest misappropriation of client funds almost always results in disbarment. (See std. 2.1(a).)

appropriate level of discipline. (*In the Matter of Sampson*, (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

Count Four – Rule 4-100(B)(3) (Failure to Maintain Records of Client Funds)

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. In count four, OCTC charges Respondent with willfully violating rule 4-100(B)(3) by failing to maintain proper accounting records for the $98,000 in settlement proceeds she received and deposited into CTA 0217 on November 13, 2014. OCTC bears the burden of proving Respondent's culpability on the charged misconduct, including the charged violation of rule 4-100(B)(3), by clear and convincing evidence. OCTC asserts that "[h]ad Respondent maintained [proper] records, she would not have 'mistakenly' removed Calderon's remaining funds from trust."

Based on a review of the evidence, the court finds that Respondent is culpable of willfully violating rule 4-100(B)(3) as charged in count four because Respondent admitted while at trial that she lost or did not save all of her client trust account records (e.g., her monthly reconciliations of her CTA's) when she and her husband transitioned her law office financial records to a computer Quick Books program not long ago. Moreover, Respondent asserted at trial that a one page document she proffered into evidence and described as Respondent's "Accounting for Client ... Calderon" was her trust account client ledger for Calderon. While that document might be an appropriate accounting for the $98,000 settlement proceeds that Respondent received on behalf of Calderon, the document does not meet the requirements of a client ledger under the State Bar Trust Account Record Keeping Standards. Finally, the court does not find credible Cohen's claims that the records of client funds she produced at trial were

made contemporaneously because she failed to produce them to the OCTC investigator as requested or at any time during the investigation or before trial.

Case Number 16-O-13399 — Calhoun Matter

Findings of Fact

Mr. A. Calhoun employed Respondent to represent him in a personal injury matter, which Respondent successfully settled in Calhoun's favor for $15,000. The $15,000 settlement was split three ways, with Calhoun and Respondent each receiving $5,000 and Calhoun's three medical providers collectively receiving $5,000. Respondent deposited the $15,000 settlement check she received on behalf of Calhoun into CTA 2063 on February 11, 2016. After that deposit, the balance in CTA 2063 rose to $34,178.10.

On March 7, 2016, Respondent issued the following five checks drawn on CTA 2063 on behalf of Calhoun:

- Check number 6036 in the amount of $1,337.95 was made payable to The Rawlings Group;
- Check number 6037 in the amount of $170 was made payable to Eric M. W. Chen, M.D.;
- Check number 6038 in the amount of $3,494.05 was made payable to Hope Chiropractic Group;
- Check number 6039 in the amount of $5,000 was made payable to Calhoun; and
- Check number 6040 in the amount of $5,000 was made payable to the Law Office of Lottie Cohen.

The foregoing five checks do not, however, total to $15,000; they total $15,002 ($1,337.95 plus $170 plus $3,494.05 plus $5,000 plus $5,000) because Respondent or

Respondent's staff issued three CTA 2063 checks.to Calhoun's medical care providers that erroneously totaled $5,002, which resulted in their being collectively overpaid by $2.

On March 8, 2016, check number 6040 in the amount of $5,000 and made payable to the Law Office of Lottie Cohen was paid. And, on March 10, 2016, check number 6039 in the amount of $5,000 and made payable to Calhoun was paid. After those two checks were paid, only $5,000 ($15,000 less $5,000 less $5,000) of the $15,000 in settlement proceeds from the Calhoun matter remained on deposit in CTA 2063.

But, on March 16, 2016, when check number 6038 in the amount of $3,494.05 and made payable to Hope Chiropractic Group was presented to Chase Bank for payment, Chase Bank returned it unpaid because it was an NSF check ($3,494.05 NSF check). On March 18, 2016, in compliance with section 6091.1, Chase Bank reported the $3,494.05 NSF check to the State Bar.

When check number 6038 in the amount of $3,494.05 was presented to Chase Bank for payment on March 16, 2016, the actual balance in CTA 2063 was only $3,155.63, when it should have had an actual balance of at least $5,000, which was the amount credited to Calhoun's three medical care providers. Thus, on March 16, 2016, the balance in CTA 2063 dipped below the $5,000 that should have been on deposit for the benefit of Calhoun's three medical care providers by $1,844.37 ($5,000 less $3,155.63)

Respondent deposited additional funds into CTA 2063 on March 28, 2016. And, on March 31, 2016, to replace the $3,494.05 NSF check, Respondent issued CTA 2063 check number 6064 in the amount of $3,494.05 and made payable to Hope Chiropractic Group.

On April 15, 2016, the OCTC sent a letter to Respondent requesting a written explanation of the $3,494.05 NSF check. Respondent received the letter.

On May 2, 2016, check number 6064 in the amount of $3,494.05 (the replacement check), made payable to Hope Chiropractic Group was paid. Thereafter, when the other two checks drawn on CTA 2063 and made payable to Calhoun's other two health care providers were presented to Chase Bank for payment, they were paid.

On May 18, 2016, Respondent responded to the State Bar's April 15, 2016, letter by sending a written explanation of the $3,494.05 NSF check to State Bar Investigator Joy Nunley. In her written explanation, Respondent stated that "check #6038 did not initially clear my trust account for the following reasons: I make (.) a slight mistake." Respondent claimed that she had written the check on March 7, 2016, and assumed it had cashed by March 16, 2016. She stated that "[m]y math was slightly off" and the balance in the account was off by a few hundred dollars, and that "just days before" the balance was sufficient to cover the check.

In July 2016, investigator Nunley sent Respondent a letter requesting further explanations for the $3,494.05 NSF check and requesting that Respondent provide her with the relevant client ledger and her monthly reconciliations and written account journal for CTA 2063. Even though Respondent provided investigator Nunley with the requested further explanations, Respondent failed to provide her with any of the trust account records that she requested.

At trial, a main issue was whether the $1,844.37 shortfall between the $5,000 that Respondent was to have held in a trust account for the benefit of Calhoun's three medical care providers and the $3,155.63 actual balance in CTA 2063 was caused by Respondent's intentional and dishonest misconduct or by Respondent's grossly negligent conduct (failing to maintain proper trust account records) or was caused by a combination of a series of unique circumstances that created the "perfect storm" and resulted in the shortfall.

Respondent and Certified Public Accountant Carrie Silvano, who was Respondent's expert witness, testified as to CPA Silvano's analysis and findings regarding the reasons for the

shortfall. Silvano testified that she analyzed the Calhoun disbursements and found the following: The $15,000 settlement was to have been distributed as follows: $5,000 to Calhoun (check cleared), $5,000 to Cohen (check cleared), and $5,000 to Calhoun's three medical care providers. On March 14, 2016, when Hope Chiropractic Group attempted to negotiate or cash the $3,494.05 check drawn on CTA 2063 that Respondent issued to it for Calhoun, there were not sufficient funds on deposit to pay the check. There should have been at least $5,000 in the account, but the account was short $1,844.37. Silvano testified that the shortfall was caused by the following four events.[7]

First, in December 2015, Respondent was a victim of identity theft/check fraud on her then-CTA 5991 in the amount of $700. The perpetrator was arrested when he tried to cash a second fraudulent check and Chase Bank froze CTA 5991. The $22,000 balance in CTA 5991 was transferred to Respondent's then new CTA (i.e., CTA 2063), along with other funds. Calhoun's funds were never in CTA 5991, and were received after and placed only in CTA 2063.

When Chase Bank refunded to Respondent the $700 it paid out on the forged check, Chase Bank deposited the $700 into CTA 5991 which it had previously frozen. When Respondent transferred the $700 from CTA 5991 to CTA 2063, the bank teller making the transfer mistakenly deposited the $700 into Respondent's general operating account. Respondent did not sign the deposit slip. Had the $700 been deposited into the proper account (i.e., CTA 2063), check number 6038 in the amount of $3,494.05 and made payable to HOPE Chiropractic Group would not have been returned unpaid as an NSF check and would have been paid.

---

[7] Contrary to OCTC's contention, CPA Silvano's opinion testimony was clearly admissible and properly considered by the court even if her testimony concerned questions of law or the ultimate issues before the court. (Evid. Code, § 805; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 277, fn. 7.).

Second, in January 2016, Chase Bank erred in withdrawing $337.94 in check printing charges from CTA 2063. The check printing charges should have been withdrawn from a non-CTA per the State Bar's requirements for financial institutions.

Third, a client in a matter unrelated to Calhoun's matter had previously been overpaid $807.30 from CTA 5991 before that account was closed after the fraud. The overpayment was due to a check cutting error on Respondent's part, but she failed to detect it for a number of months. The overpayment was discovered only through Silvano's forensic analysis. Had Silvano not discovered the overpayment, it might not have ever been discovered. Respondent's failure to promptly discover the $807.30 overpayment is strong evidence that Respondent was not keeping the required trust account records and was grossly negligent in handling and accounting for client funds.

Fourth, Respondent collectively overpaid Calhoun's three medical care providers a total of $2. Even though small in size, this overpayment is other evidence that Respondent was lax in her handling and accounting for client funds.

Respondent and her husband testified further that during the relevant time period, she relocated her office and switched to QuickBooks which further added to a perfect storm that resulted in the bounced check. Mr. Cohen testified that he handled the transfer of computer hardware and software installation and reconfiguration for Respondent's office move. He testified that incompatibility issues required an upgrade and transition to drop box, and, as a result of bandwidth complications, the staff had to cut checks without access to client files in January 2016.

Just like in the Calderon matter addressed above in consolidated case number 15-O-11271, everyone in the Calhoun matter received all the money to which they were entitled.

///

Conclusions of Law

Count One – Section 6106 ([Moral Turpitude – Issuance of NSF Check)

In count one in the first amended NDC, OCTC charges that, on about March 7, 2016, Respondent issued check number 6038 in the amount of $3,494.05 drawn on CTA 2063 when Respondent knew or was grossly negligent in not knowing that there were insufficient funds in the client trust account to pay the check and thereby committed an act involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

For the same reasons set forth above in count one in the Calderon matter, the court finds that OCTC failed to establish, by clear and convincing evidence, the violation of section 6106 charged in count one in the first amended NDC. Accordingly, count one in the first amended NDC is DISMISSED with prejudice for want of proof.

Count Two – Section 6106 (Moral Turpitude - Misappropriation)
Count Three – Rule 4-100(A) (Failure to Keep Client Funds in Trust Account

As noted above, the record clearly establishes that on March 16, 2016, the actual balance in CTA 2063 dipped below the $5,000 that was credited to Calhoun's three medical care providers by $1,844.37.

Thus, a presumption arises that Respondent misappropriated $1,844.37 of the medical care providers funds on March 16, 2016. Accordingly, the burden shifted to Respondent to show that no misappropriation occurred or that the misappropriations occurred as a result of negligence and not gross negligence or intentional dishonesty.

Respondent did not and could not establish that no misappropriation occurred because the record clearly establishes that Hope Chiropractic Group was deprived of the use and benefit of its $3,494.05 beginning on March 16, 2016, when Chase Bank returned check number 6038

unpaid because it was an NSF check. Respondent did, however, clearly establish that she did not intentionally or dishonestly misappropriate any of the medical care providers' funds.

Respondent did, however, fail to clearly establish that she kept the contemporaneous accounting records of her receipt and disbursement of client funds that are required under the State Bar Trust Account Record Keeping Standards. In addition, Respondent was grossly negligent in handling and accounting for client funds because she over paid a client $807.30 and failed to detect, discover, or correct this error for a number of months. Accordingly, the record clearly establishes that Respondent misappropriated $1,844.37 of the medical care providers' funds through gross negligence in not keeping the required contemporaneous accounting records and by not reconciling her trust accounts. The court's finding of gross negligence is further supported by Respondent's admission that she regularly disburses settlement proceeds by issuing checks drawn on her CTA to her clients before the settlement proceeds are actually on deposit in her CTA. In fact, this reckless practice was a contributing cause of the $3,494.05 NSF check being returned unpaid. The court finds Respondent culpable of willfully violating section 6106.

Respondent also willfully violated rule 4-100(A) as charged in count three of the first amended NDC by failing to maintain client funds in her trust account. As noted above, the court gives no additional weight to this violation in determining the appropriate level of discipline.

Count Four – Rule 4-100(B)(3) (Failure to Maintain Records of Client Funds)

In count four of the first amended NDC, OCTC charges Respondent with willfully violating rule 4-100(B)(3) by failing to maintain proper accounting records for the $15,000 in settlement proceeds she received and deposited into CTA 2063.

The court finds Respondent culpable of willfully violating rule 4-100(B)(3) as charged in count four because Respondent admitted at trial that she lost or did not save many of her client trust account records (e.g., her monthly reconciliations of her CTA's) when she and her husband

transitioned her law office financial records to a computer Quick Books program not long ago. Respondent was grossly negligent in not backing up the records she stored on her computer.

Aggravation

Multiple Acts (Std. 1.5(b).)

Respondent's misconduct involved multiple acts of wrongdoing.

Indifference (Std. 1.5(k).)

Respondent is indifferent to her wrongdoing. First, because of her failure to heed a prior warning in the Calderon matter, and second, because she seems to misunderstand the CTA handbook requirements in several respects, even after attending CTA School. However, Respondent now recognizes her need to hire an accounting professional to handle her client trust account records. The court therefore gives moderate weight in aggravation to Respondent's indifference.

Lack of Candor (Std. 1.5(l).)

As noted above, the court finds that a portion of Respondent's trial testimony lacked candor, which is a very serious aggravating circumstance. ("[F]raudulent and contrived misrepresentations to the State Bar may perhaps constitute a greater offense than misappropriation." (*Chang v. State* Bar (1989) 49 Cal.3d 114, 128.)

Mitigation

No Prior Record (Std. 1.6(a).)

Respondent had about 34 years of misconduct-free practice before her misconduct in this matter. Respondent's lack of a prior record of discipline is compelling mitigation. However, the totality of the circumstances in the present proceeding do not establish that Respondent is not likely to again engage in similar misconduct. Therefore, the court assigns moderate weight to Respondent's lack of a prior record. (*Cooper v. State Bar* (1987) 43 Cal3d 1016, 1029 [where

misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur.].)

Good Character (Std. 1.6(f).)

Respondent presented declarations from eleven individuals who attested to her good character. Five of the declarants testified at trial. John Ronge is an attorney and CPA. Serious consideration is given to the testimony of attorneys because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) The other declarants all described the valuable legal services that Respondent provided to them in their personal and business capacities. They indicated that Respondent is trustworthy, reliable, dependable, diligent, professional and ethical.

Several of the witnesses were not completely aware of the full extent of the charges. The witnesses were "generally aware" of the charged misconduct but two of the witnesses testified to having read only one NDC. It was also clear that Respondent had explained to them that the charges were due to mistake or accounting or computer problems and they relied on her representations as fact and truth. However, some of the witnesses concluded that no one lost any money, and she quickly rectified the situation. Even after being informed of the charges, they would not change their minds because they believe she would not have done it intentionally.

Respondent's good character warrants significant mitigation.

DISCUSSION

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great weight" and will not reject a discipline recommendation that is consistent with the standards unless the court has "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory, and may be deviated from when there is an appropriate reason for doing so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7 provides that, if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. When two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.7(a).) The most severe discipline is set forth in standard 2.1(b), which applies to Respondent's misappropriations of client funds through gross negligence in willful violation of section 6106. Standard 2.1(b) provides that actual suspension is the presumed sanction for misappropriations involving or resulting from gross negligence.

Next, the court looks to case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) "Misappropriation of client funds has long been viewed as a particularly serious ethical violation. [Citations.]" (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) Likewise, Respondent's failure to keep the required trust accounting records is serious misconduct. Had Respondent kept the required records contemporaneously with her receiving and disbursing client funds, she may have been able to avoid the two NDC's that were filed against her in this consolidated

proceeding. Thus, the court will require that Respondent have her trust account record keeping monitored by a California CPA during the term of her disciplinary probation.

In determining the appropriate level of discipline, the court specifically considers decisional law relevant to Respondent's grossly negligent misappropriation. The court finds that *Brockway v. State Bar* (1991) 53 Cal.3d 51 and *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, are relevant on the issue of discipline.

In *Brockway,* the Supreme Court placed Brockway on one year's stayed suspension and two years' probation with conditions, including a three-month actual suspension, for misconduct in two separate client matters. In the first matter, Brockway misappropriated $500 through gross negligence and failed to return client funds. In the second matter, Brockway acquired an adverse interest in the client's property. In mitigation, Brockway had 13 years of discipline-free practice in California and five in Iowa. In aggravation, Brockway displayed questionable candor and indifference.

In *Bouyer,* the attorney committed misconduct in two client matters.[8] In each matter Bouyer allowed his trust account to fall below the amount he was required to maintain on behalf of his clients. Culpability was based on his grossly negligent failure to supervise his staff in handling client trust funds and amounted to moral turpitude. Bouyer was also culpable of failing to perform with competence. In aggravation, the court found multiple acts, client harm, concealment, lack of candor, incomplete restitution, and uncharged misconduct of failing to promptly notify his clients of the receipt of settlement funds. Bouyer received mitigating credit for voluntarily curing his office procedure deficiencies, the lack of intentional misconduct or

[8] Although his misconduct involved three clients, the court treated one personal injury case involving two clients as a single matter.

venality, and the payment of restitution to all but one client before the State Bar's involvement. Bouyer was actually suspended for six months.

The court finds the misconduct in this matter more similar to that of the attorney in *Bouyer* than that of the attorney in *Brockway*, in which the amount misappropriated was much less and which involved only one client. Respondent in this matter has been found culpable in two client matters of misappropriating client funds totaling over $24,000 due to her gross negligence and of failing to maintain records of client funds. In aggravation, she engaged in multiple acts of wrongdoing; demonstrated indifference; and parts of her testimony before this court lacked candor - a serious aggravating circumstance. In mitigation, Respondent was given moderate weight for her 34 years of discipline-free practice and significant weight in mitigation for good character. However, the court finds that the aggravating circumstances in this matter clearly outweigh the mitigating circumstances.

Although, Respondent is indifferent to her wrongdoing, the court has taken the fact that Respondent retained CPA Silvano on her own to assist her in complying with her duty to maintain accurate trust account records into consideration when determining the appropriate level of discipline in this proceeding, because Respondent's retention of Silvano was designed to prevent any further misconduct. (Cf. *Waysman v. State Bar* (1986) 41 Cal.3d 452, 458 [remedial steps taken upon the discovery of misappropriation resulting from laxity rather than an intent to defraud]; *Palomo v. State Bar* (1984) 36 Cal.3d 785, 797–798 [reform of lax office management practices which had caused misappropriation and commingling of funds].)

Furthermore, Respondent did not act dishonestly in the client matters and everyone received the funds they were entitled to. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38 ["An attorney who deliberately takes a client's funds, intending to keep them permanently, and answers the client's inquiries with lies and evasions, is deserving of more severe discipline than

an attorney who has acted negligently, without intent to deprive and without acts of deception"].) Considering all relevant factors, the court finds that one year's stayed suspension and two years' probation, with conditions, including six-months' actual suspension, as in *Bouyer*, together with conditions of probation, including that Respondent attend the State Bar Trust Accounting School and that Respondent's CTA be supervised by a certified public accountant, is the appropriate discipline in this matter. This level of discipline should impress on Respondent the "high degree of care and fiduciary duty [she] owes to those [she] represents." (*Stuart v. State Bar* (1985) 40 Cal.3d 838, 847.)

RECOMMENDATIONS

Discipline – Actual Suspension

It is recommended that respondent LOTTIE WOLFE COHEN, State Bar number 94674, be suspended from the practice of law in the State of California for one year, that execution of that suspension be stayed, and that Respondent be placed on probation for two years with the following conditions.

Conditions of Probation

Actual Suspension

Respondent must be suspended from the practice of law for the first six months of Respondent's probation.

Review Rules of Professional Conduct

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126 and (2) provide a declaration, under penalty of perjury, attesting to Respondent's

compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

Maintain Valid Official Membership Address and Other Required Contact Information

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

///

State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

Quarterly and Final Reports

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and

signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

Ethics School and Trust Accounting School

Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and of the State Bar Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending these sessions. If Respondent provides satisfactory evidence of completion of the Ethics School and/or the Client Trust Accounting School after the date of this decision but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward her duty to comply with this condition.

///

///

Accountant's Certification

a. Certification of Compliance. If Respondent possessed client funds, property, or securities at any time during the period covered by a required quarterly or final report, Respondent must submit with the report for that period a statement from a California certified public accountant or other financial professional approved by the Office of Probation certifying whether:

1. Respondent handled all such client funds, property, and/or securities in compliance with rule 4-100 of the Rules of Professional Conduct; and

2. Respondent complied with the "Trust Account Record Keeping Standards" adopted by the State Bar Board of Trustees, pursuant to rule 4-100(C) of the Rules of Professional Conduct.

b. No Certification Necessary. If Respondent did not possess any client funds, property, or securities during the entire period covered by a quarterly or final report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period, and no accountant certification is required for that period.

Commencement of Probation

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Respondent has complied with all the conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

PROFESSIONAL RESPONSIBILITY EXAMINATION

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's

Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this decision, but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward her duty to comply with this requirement.

RULE 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[9] Failure to do so may result in disbarment or suspension.

COSTS

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10,

///

///

///

[9] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: October 5, 2018.

Cynthia Valenzuela

CYNTHIA VALENZUELA
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 5, 2018, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LOTTIE WOLFE COHEN
WESTWOOD LAWYERS
2288 WESTWOOD BLVD STE 216
LOS ANGELES, CA 90064 - 2000

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

KIMBERLY G. ANDERSON, Enforcement Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 5, 2018.

Paul Songco
Court Specialist
State Bar Court